

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,

Plaintiff / Counterclaim Defendant,

v

J.T. POSEY COMPANY,

Defendant / Counterclaim Plaintiff.

Civil Action No. 05-10917 PBS

Hearing Requested

**HIPSAVER'S MOTION *IN LIMINE* TO EXCLUDE
POSEY'S AFFIRMATIVE DEFENSE OF UNCLEAN HANDS**

The plaintiff, HipSaver Company, Inc. ("HipSaver"), moves *in limine* to exclude Posey's affirmative defense of unclean hands. Through counsel, Posey has represented that it will seek to circumvent this Court's dismissal of Posey's counterclaims through its affirmative defense of unclean hands. HipSaver moves this Court to dismiss such a tactic.

Posey's unclean hands defense is simply a repackaging of Posey's Lanham Act counterclaim, which this Court dismissed at Summary Judgment. Memorandum and Order, June 15, 2007. Because the facts underlying Posey's unclean hands argument are the same as those upon which Posey based its Lanham Act claims, this defense should be excluded. Furthermore, Posey's defense of unclean hands must fail because the challenged HipSaver conduct is not related to HipSaver's claims for false advertising, breach of contract, and false and deceptive business practices under Ch. 93A, and Posey fails to show that it suffered any injury.

For these reasons, more fully briefed in the accompanying memorandum, Posey's unclean hands defense should be excluded.

CERTIFICATE PURSUANT TO CIVIL LOCAL RULE 7.1

I hereby certify that on May 25, 2007, counsel for HipSaver and counsel for Posey conferred by telephone in a good faith attempt to resolve or narrow the issues presented in this motion but were unable to reach agreement.

THE HIPSAVER COMPANY, INC.
By its Attorneys,

/s/ Courtney M. Quish

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May 25, 2007

CERTIFICATE OF SERVICE

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

/s/ Courtney M. Quish

May 25, 2007

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